



West Virginia Offices of the Insurance Commissioner

NOTICE

AUGUST 2019

TO: All Insurance Companies Doing Business in the State of West Virginia, Insurance Trade Associations, Insurance Media Publications and Other Interested Persons

RE: Claims Handling for Total and Partial Losses

The West Virginia Offices of the Insurance Commissioner (OIC) has become aware of an influx of property damage claims due to recent instances of severe weather in our state during the spring and summer. The purpose of this Notice is to provide continued guidance from the OIC regarding the handling of total and partial loss claims.

One of the central purposes of West Virginia's *Unfair Claims Settlement Practices Act* is to assure timely action on claims and require insurers to have meaningful communication with claimants so they are kept apprised of the status of their claims. Pursuant to W.Va. Code § 33-11-4(9), "[n]o person shall commit or perform with such frequency as to indicate a general business practice any of the following: ... (b) [f]ailing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies, (c) [f]ailing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies."

In addition, several provisions of W.Va. Code of State Rules §§ 114-14-1, *et seq.*, provide guidance on claims handling requirements regarding the timeliness of investigations and communication with claimants. Some pertinent provisions are set forth as follows:

- §114-14-5.1. *Acknowledgment of notices of claims.* -- Every insurer, upon receiving notification of a claim shall, within fifteen (15) working days, acknowledge the receipt of such notice unless full payment is made within such period of time. If an acknowledgment is made by means other than writing, an appropriate notation of such acknowledgment shall be made in the claim file of the insurer and dated. Notification given to an agent of an insurer shall be notification to the insurer.
- §114-14-5.3. *Replies to other pertinent communications.* -- A reply shall be made within fifteen (15) working days of receipt by the insurer to all other pertinent communications from a claimant which reasonably suggest that a response is expected.
- §114-14-6.1. *Investigation of claims.* -- Every insurer shall promptly conduct and diligently pursue a thorough, fair and objective investigation and may not unreasonably delay resolution by persisting in seeking information not reasonably required for or material to the resolution of a claim dispute...

- §114-14-6.2. *Establishment of investigatory procedures.* --
 - a. Every insurer shall establish procedures to commence an investigation of any claim filed by a claimant, or by a claimant's authorized representative, within fifteen (15) working days of receipt of notice of claim.
 - b. Every insurer shall provide to every first-party claimant, or to the claimant's authorized representative, a notification of all items, statements and forms, if any, which the insurer reasonably believes will be required of such claimant, within fifteen (15) working days of receiving notice of the claim.
 - c. A claim filed with an agent of an insurer shall be deemed to have been filed with the insurer unless, consistent with law or contract, such agent promptly provides written notification to the person filing the claim that the agent is not authorized to receive notices of claim.
- §114-14-6.3. *Duty after investigation.* -- Within ten (10) working days of completing its investigation, the insurer shall deny the claim in writing or make a written offer, subject to policy limits...
- §114-14-6.7. *Notice of necessary delay in investigating claims.* -- If the insurer needs more than thirty (30) calendar days from the date that a proof of loss from a first-party claimant or notice of claim from a third-party claimant is received to determine whether a claim should be accepted or denied, it shall so notify the claimant in writing within fifteen (15) working days after the thirty-day period expires. If the investigation remains incomplete, the insurer shall provide written notification of the delay to the claimant every forty-five (45) calendar days thereafter until the investigation is complete. All such notifications must set forth the reason(s) additional time is needed for investigation...
- §114-14-6.17. *Required information for claim denial notices.* -- Any notice rejecting any element of a claim shall contain the identity and the claims processing address of the insurer and the claim number. The notice must state that the claimant has the option of contacting the Commissioner. The notice must provide the Commissioner's mailing address, telephone number and web site address.

Furthermore, West Virginia's *Valued Policy Law*, set forth in W.Va. Code § 33-17-9 provides, in pertinent part, "[a]ll insurers providing fire insurance on real property in West Virginia shall be liable, in case of total loss by fire or otherwise, as stated in the policy, for the whole amount of insurance stated in the policy, upon such real property; and in case of partial loss by fire or otherwise, as aforesaid, of the real property insured, the liability shall be for the total amount of the partial loss, not to exceed the whole amount of insurance upon the real property as stated in the policy." As defined in W.Va. Code § 33-1-10(c), fire insurance means "insurance on real or personal property of every kind and interest therein, against loss or damage from any or all hazard or cause, and against loss consequential upon such loss or damage, other than noncontractual liability for any such loss or damage."

The OIC has consistently interpreted W.Va. Code § 33-17-9 to require, in the case of total loss by fire or otherwise, that the insurer is required to pay the whole amount stated in the policy declarations upon the real property insured. Further, in the case of a partial loss by fire or otherwise, the insurer must pay the total amount of the partial loss, or replacement cost, not to exceed the whole amount of insurance upon such real property. No depreciation or coinsurance shall be applied in any manner to the settlement. This would apply to all perils covered by the real property policy. The intent is not to deprive an insurer of any proper defense under the policy or to create additional coverage, but to clarify that the insurer's liability under the policy, if caused by a covered peril, shall be in the amount of money for which the property was insured and for which a premium has been charged and paid.¹ Any policy provisions inconsistent with W.Va. Code § 33-17-9 may be considered void and, pursuant to W.Va. Code § 33-6-17, will be construed and applied in accordance with W.Va. Code § 33-17-9. See also *West Virginia Informational Letter No. 10* and W.Va. Code § 33-6-9.

You should direct this Notice to those in your company who adjust claims in this state or supervise those who do to ensure your adjusters are aware of these relevant provisions of West Virginia law. In addition to this Notice, companies should ensure that adjusters handling claims in this state review *West Virginia Informational Letter No. 189* and *West Virginia Informational Letter No. 10*, both posted on our agency's website at www.wvinsurance.gov/Resources/Informational-Letters.

The OIC, as the regulator of the insurance industry, is a valuable resource and we encourage all insurers, independent adjusters, third-party administrators, or other persons who adjust claims in this state, to consult with our agency any time an adjuster is uncertain about specific claims handling requirements in our state. Although we cannot provide legal advice specific to a claim, we can share our expectations as a regulator on the requirements of statutes and rules.



James A. Dodrill
Insurance Commissioner
State of West Virginia

¹ The Legislature has exempted farmers' mutual insurance companies from the state's Valued Policy Law. See W.Va. Code 33-22-7(c) and *Yeager v. Farmers Mut. Ins. Co.*, 192 W.Va. 556, 453 S.E.2d 390 (1994).